

RALPH C. MEMMOTT

IBLA 84-106

Decided September 27, 1985

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring the Red Rocks (U-131079), Half Way Hills No. 1 (U-131080), and Half Way Hills No. 2 (U-131081) unpatented lode mining claims abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Where the owner of a mining claim located prior to Oct. 21, 1976, fails to file either a notice of intention to hold, an affidavit of assessment work performed, or a detailed report provided by sec. 28-1 of Title 30, U.S.C., prior to Oct. 22, 1979, the claim is deemed conclusively to have been abandoned and void.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

When enacting sec. 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), Congress intended to extinguish those claims for which timely filings were not made. Failure to file on time, in and of itself, causes the claims to be lost.

3. Mining Claims: Lands Subject to -- Patents of Public Lands: Effect

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims. Mining claims located on such lands are void ab initio.

APPEARANCES: Ralph C. Memmott, Fillmore, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Ralph C. Memmott has appealed from a July 15, 1983, decision of the Utah State Office, Bureau of Land Management (BLM), which declared the Red Rocks and Half Way Hills Nos. 1 and 2 unpatented lode mining claims abandoned and void because no evidence of annual assessment work or notice of intention to hold the claims had been filed in 1979. The decision also stated that appellant

may wish to relocate subject mining claims * * * providing that there are no intervening third party rights and the lands are open to mineral entry. The W 1/2 SW 1/4 (Lots, 3 and 4) sec. 7, T. 22 S., R. 4 W., SLM was patented February 4, 1921 (H.E. 793802) with no reservation of minerals to the United States. [Emphasis in original.]

On May 5, 1984, notice was given that this Board was suspending consideration of this appeal pending a decision by the United States Supreme Court in United States v. Locke. On April 1, 1985, the Supreme Court rendered an opinion (United States v. Locke, 105 S. Ct. 1785 (1985)), and this case once again became ripe for review.

The record discloses that appellant's co-locator had filed a copy of the location notice for each claim on October 9, 1979, in accordance with the requirements of 43 U.S.C. § 1744(b) (1982). A cover letter was enclosed with the documents. The cover letter notes that three location notices were enclosed but makes no reference to any affidavit of assessment work or notice of intent to hold.

[1] The law applicable to this case can be found at 43 U.S.C. § 1744 (1982) which provides in pertinent part:

§ 1744. Recordation of mining claims

(a) Filing requirements

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, or a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) Additional filing requirements

The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976 shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. * * *

(c) Failure to file as constituting abandonment; defective or timely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site. [Emphasis added.]

The record contains the notices of location and a map describing the claims as required by subsection (b) which were filed prior to October 22, 1979, but contains no notice of intent to hold or affidavit of annual assessment work performed for 1979, as required by paragraph (2) of subsection (a). Subsection (c) provides that failure to file such instruments as required by subsections (a) and (b) cause the claims to be deemed conclusively to have been abandoned.

[2] As previously noted, this matter was suspended pending the Supreme Court's determination in United States v. Locke, supra. In Locke the Court found that it was the intent of Congress to extinguish those claims for which timely filings were not made. The Court further found that failure to file on time, in and of itself, causes the claims to be lost. Locke, supra at 1795-96. Appellant's failure to file a notice of intent to hold, an affidavit of assessment work performed, or a detailed report related thereto with BLM in 1979, as required by 43 U.S.C. § 1744(a)(2) (1982) caused appellant's claims to be deemed abandoned and void. The BLM decision is affirmed.

[3] Appellant also contends the BLM decision that the lands in HE 793802 were unavailable for mineral entry was in error. The basis for this contention is the fact that a patent to lands under the Stock-Raising Homestead Act of 1916, 43 U.S.C. §§ 291-301 (1976), reserved minerals to the

United States. However, an examination of the patent to HE 793802 discloses that this tract was patented pursuant to the Act of May 20, 1862, 43 U.S.C. §§ 161-164, 173, 175, 183, 184, 201, 211, 255 (1976). 1/

Mining claims may be located only on lands open to the operation of the United States mining laws. Lands which are patented without reservation of minerals to the United States are not available for the location of mining claims. 2/ Mining claims located on such lands are null and void ab initio. E.g., Paul S. Coupey, 33 IBLA 178 (1977); Floyd W. McCarthy, 28 IBLA 246 (1976); Montana Copper King Mining Co., 20 IBLA 30 (1975). As no minerals were reserved in the patent of HE 793802, the lands contained therein are not available for mineral entry.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

1/ The Stock-Raising Homestead Act of 1916 and the Act of May 20, 1862, were repealed by the Federal Land Policy and Management Act of 1976, 90 Stat. 2789 (1976).

2/ It was not until 1909 that Congress provided for separation of the mineral estate and mandatory reservation thereof in public land patents. See generally United States v. Union Oil Company of California, 549 F.2d 1271, 1275 (9th Cir. 1977), cert. denied, 434 U.S. 930 (1978) (discussion of history and rationale for separation of the estates in patents).

